

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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RENDELL MILLER,

Plaintiff,

v.

BURTON COX,

Defendant.

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ORDER

08-cv-044-bbc

In this case plaintiff Rendell Miller is proceeding on his claim that defendant Burton Cox violated plaintiff's Eighth Amendment rights by failing to increase the strength of his pain medication and arrange for x-rays following a fall plaintiff took in the prison shower on July 14, 2007. On September 30, 2008, defendant filed a motion, dkt. #46, requesting an extension of the dispositive motion deadline from October 10, 2008 to October 31, 2008. On October 1, 2008, I issued an order, dkt. #49, granting defendant's motion because of defendant's attorney's heavy case load and unanticipated medical problems. On October 29, 2008, defendant filed a motion for summary judgment, dkt. #50.

On November 12, 2008, plaintiff filed a motion to "strike" defendant's summary judgment motion, dkt. #55. Plaintiff contends that allowing defendant to file a summary

judgment motion after the original October 10 deadline will be prejudicial to plaintiff because of a discovery dispute plaintiff has with defendant. Plaintiff's motion is far too late. If he felt that it would have been prejudicial to extend the dispositive motion deadline, he had a month before the new deadline arose in which to file a motion challenging defendant's request or the court's order granting the extension. Further, the prejudice or disadvantage plaintiff alleges he would suffer would actually have been abated by extending the dispositive motion deadline. Plaintiff complains of some problems with discovery. Extending the dispositive motion deadline provided plaintiff with an additional three weeks in which to address any discovery disputes before any dispositive motions were due. Therefore, plaintiff's motion will be denied.

I also want to remind plaintiff that he has until November 28, 2008, in which to file his opposition to plaintiff's summary judgment motion. He should refer to the pretrial conference order, dkt. #23, and specifically, to the three attachments regarding summary judgment motions, in preparing and filing his opposition.

ORDER

IT IS ORDERED that plaintiff's motion to strike defendant's motion for summary judgment, dkt. #55, is DENIED.

Entered this 14<sup>th</sup> day of November, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge